



Aleksey Navalnyy subjected to degrading treatment during 2012 opposition protests

The case [Navalnyy and Gunko v. Russia](#) (application no. 75186/12) concerned two protesters' arrest at Bolotnaya Square in May 2012 during a political rally followed by their overnight detention at a police station and their administrative conviction for disobeying lawful orders of the police. One of the protestors, Aleksey Navalnyy, alleged in particular that a police officer had applied excessive physical force during his arrest.

The May 2012 opposition protests and resultant disturbances in central Moscow have been at the centre of several earlier cases dealt with by the European Court of Human Rights.

In today's **Chamber judgment**¹ in the case the European Court held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights in respect of Mr Navalnyy;

a violation of Article 5 (right to security and liberty) of the Convention in respect of both applicants;

a violation of Article 6 § 1 (right to a fair trial) as regards the fairness of the administrative proceedings in respect of both applicants ; and,

a violation of Article 11 (freedom of assembly) as concerned both applicants.

The Court found in particular that Mr Navalnyy had been subjected to degrading treatment in violation of Article 3 of the Convention on the basis of an online video showing his arrest. The footage revealed that the restraint employed by the police officers – twisting Mr Navalnyy's arm and making him scream – had not been strictly necessary for bringing him to the police station as he had not put up any visible resistance.

As concerned the remaining complaints, the Court found that the facts and most of the legal issues raised had already been examined in other similar cases where violations had been found and saw no reason to come to a different conclusion in the present case.

Principal facts

The applicants, Aleksey Anatolyevich Navalnyy and Vadim Borisovich Gunko, are Russian nationals, who were born in 1976 and 1960, respectively, and live in Moscow.

The applicants took part in a demonstration on 6 May 2012 at Bolotnaya Square to protest against the allegedly rigged presidential elections. The officially approved protest was peaceful until the police took measures to control the crowd, resulting in a standoff and clashes.

Both applicants were arrested during the commotion, taken to a Moscow police station, placed in administrative detention and charged with disobeying a lawful police order. They were brought before a judge the next day and convicted as charged.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The judge considering Mr Navalnyy's case found that he had called on protesters not to leave the venue after the assembly and to ignore police orders. He was fined. The judge ruling on Mr Gunko's case found that he had attempted to break through a police cordon, acted aggressively, shouted slogans, and attempted to obstruct traffic. He was sentenced to 24 hours' administrative detention. Both applicants unsuccessfully appealed against those decisions.

Throughout the proceedings Mr Navalnyy submitted that he had been arrested on his way up to a stage where he was about to give a speech, without being given any prior warning or orders from the police. Providing a video recording from a video-sharing website showing his arrest, he alleged in particular that a police officer had pushed him all the way to the police station while twisting his arm and forcing him to bend forward, even though he had not put up any resistance. The appellate court ultimately dismissed his allegations because the recording did not indicate the date and time when it had been made, as well as rejected his request to summon and question the two police officers on whose statements his conviction had been based.

Similarly, Mr Gunko maintained during the proceedings that he had received no prior police warning and had shown no resistance. He had simply been trying to leave the demonstration when he had been caught up in an area cordoned off by the police and therefore closed to traffic.

Mr Navalnyy lodged a complaint with the authorities that a police officer had used excessive force during his arrest by twisting his arm, causing him severe physical pain. Enquiries were conducted as a result but no criminal proceedings have ever been opened into his allegation.

Complaints, procedure and composition of the Court

Both applicants complained of a breach of their rights under Articles 5 § 1 (right to liberty and security), 6 § 1 (right to a fair trial), 11 (freedom of assembly and association) and 18 (limitation on use of restrictions on rights). They alleged in particular that their arrest and overnight detention had been unjustified and arbitrary; that the administrative proceedings against them had been unfair; that the dispersal of the demonstration, their arrest and ensuing conviction had been disproportionate; and, that those breaches of their rights had been intended to undermine their right to liberty and freedom of assembly.

Also relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Navalnyy argued that the recourse to physical force by the police during his arrest had not been justified and had amounted to ill-treatment.

The application was lodged with the European Court of Human Rights on 25 October 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Paul Lemmens (Belgium), *President*,
Georgios A. Serghides (Cyprus),
Helen Keller (Switzerland),
Dmitry Dedov (Russia),
María Elósegui (Spain),
Anja Seibert-Fohr (Germany),
Peeter Roosma (Estonia),

and also Milan Blaško, *Section Registrar*.

Decision of the Court

Article 3

The Court examined Mr Navalnyy's complaint that during his arrest a police officer had twisted his arm with such force as to make him scream. It observed that nothing in the video footage suggested that restraining Mr Navalnyy in that way had been indispensable for bringing him to the police station. His arrest had been carried out by a group of well-equipped police officers, and he had not put up any visible resistance to them.

Moreover, the authorities had limited themselves to conducting enquiries into Mr Navalnyy's complaint and had refused to investigate the alleged ill-treatment in criminal proceedings.

The Court therefore concluded that it had not been convincingly shown that using physical force had been necessary. Such use of force had diminished Mr Navalnyy's human dignity and had amounted to degrading treatment, in violation of Article 3 of the Convention.

Article 5 § 1

As concerned the applicants' arrest, the Court observed that they had first been taken to the police station for the purpose of drawing up an administrative-offence record. It accepted that in the context of the general commotion which had been happening at Bolotnaya Square, the police could hardly have drawn up the records on the spot.

However, once the administrative-offence records had been drawn up, the applicants could have been released. They had instead been held in administrative detention for approximately 18 and 20 hours respectively, without any explicit reasons.

The Court therefore considered that both applicants' administrative detention had been unjustified and arbitrary, in violation of Article 5 § 1 of the Convention.

Article 6 § 1

As to the fairness of the administrative proceedings, the Court noted in both cases that the courts had based their judgments exclusively on standardised documents submitted by the police, refusing to accept additional evidence or argument.

Indeed, the main evidence against Mr Navalnyy, namely written statements by police officers, had not been tested in judicial proceedings as the courts had refused to summon the officers. Such a failure ran counter to the fundamental principles of criminal law.

Likewise, the courts had refused to verify Mr Gunko's statement that there had been no traffic, limiting the scope of the administrative case to his alleged disobedience.

The Court therefore concluded that the administrative proceedings against the applicants, taken as a whole, had been conducted in violation of their right to a fair hearing guaranteed by Article 6 § 1 of the Convention.

Article 11

Firstly, the Court found that the domestic authorities had failed to comply with their duty under the European Convention to ensure the peaceful conduct of the assembly at Bolotnaya Square, reaching the same conclusion as in the case of [Frumkin v. Russia](#) (no. 74568/12).

Secondly, the Court examined the applicants' arrests and convictions, finding that such measures had amounted to an interference with their right to freedom of assembly.

To justify having taken such measures, it had been up to the domestic courts to establish the key facts in the administrative proceedings against the applicants. However, the courts had neither

established whether Mr Navalnyy had been aware of the official order to disperse nor addressed Mr Gunko's explanation that he had simply been trying to go home and had got caught up in the cordoned-off area. The authorities had therefore failed to demonstrate that the applicants' arrest and conviction had been "necessary in a democratic society".

Moreover, Mr Navalnyy's brutal arrest, and both applicants' administrative convictions, had to have had a chilling effect, discouraging them and others from attending protest rallies or from engaging actively in opposition politics.

There had accordingly been a violation of Article 11 of the Convention in respect of both applicants.

Article 18

The Court held that there was no need to examine the applicants' complaints under Article 18 of the Convention.

Article 41 (Just satisfaction)

The Court held that Russia was to pay Mr Navalnyy 8,500 euros (EUR) and Mr Gunko EUR 7,500 in respect of non-pecuniary damage. The Court rejected each applicant's claim for costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.